

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHARON K. ANDREW
Claimant

VS.

BEECH AIRCRAFT CORPORATION
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket No. 206,094

ORDER

Respondent appeals from a preliminary hearing Order of February 27, 1996 and an Order Nunc Pro Tunc of March 21, 1996, wherein Administrative Law Judge John D. Clark granted claimant benefits, finding claimant had suffered accidental injury arising out of and in the course of her employment on June 14, 1995, and had provided both notice to the respondent of the injury and submitted written claim in a timely fashion.

ISSUES

- "1. Whether the Administrative Law Judge erred by finding that claimant's workers compensation injury was compensable;
- "2. Whether the Administrative Law Judge erred by finding that respondent received timely notice of injury and whether timely written claim was made; and
- "3. Whether the Administrative Law Judge exceeded his jurisdiction."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds the Order of February 27, 1996 and the Order Nunc Pro Tunc of March 21, 1996 should be affirmed. Claimant alleged accidental injury during the

period June 1992 through June 1993 in claimant's E-1 filed October 26, 1995. On February 27, 1996 claimant filed an Amended E-1, alleging accidental injury in a series through June 14, 1995. Claimant also advised the Administrative Law Judge and the respondent at the preliminary hearing of February 27, 1996 that she intended to amend her E-1 to include the additional injury date through June 14, 1995. Respondent objected to the claimant's method of procedure but the Administrative Law Judge allowed the amendment.

Claimant testified to having discussed her problems as early as 1993 with Dorothy, her supervisor. Claimant's injury, in this docketed case, is very similar to the injury alleged by claimant in Docket No. 195,804 with an injury date of October and November 1994. Claimant is alleging neck, upper back and left upper extremity symptomatology in this matter with the injury in Docket No. 195,804 involving claimant's cervical and upper extremities.

Claimant's uncontroverted testimony is sufficiently persuasive to convince the Appeals Board that she did discuss her ongoing symptomatology with her supervisor during the period of time up through June 14, 1995, her last day of employment with respondent. Claimant's testimony convinces the Appeals Board, for preliminary hearing purposes, that not only did she suffer accidental injury on the dates alleged but she also provided notice to the respondent of her ongoing symptomatology. Claimant's Amended E-1, filed February 27, 1996, as an amendment to the E-1 filed October 26, 1995, would relate back to the October 26, 1995 original filing date. As the October 26, 1995 filing date is within 200 days of claimant's alleged date of injury of June 14, 1995, this would also satisfy the written claim requirements of K.S.A. 44-520a.

The Administrative Law Judge, in both the Order and the Order Nunc Pro Tunc, was asked to decide whether claimant suffered accidental injury arising out of and in the course of her employment, whether claimant had provided timely notice or whether claimant had provided timely written claim, and the specific date of claimant's accidental injury. The Appeals Board finds all of the above to be within the Administrative Law Judge's jurisdiction at a preliminary hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of February 27, 1996 and Order Nunc Pro Tunc of March 21, 1996 from Administrative Law Judge John D. Clark should be, and are hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Jeff C. Spahn, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director